

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOSE ANTONIO MARTINEZ,

Plaintiff,

v.

GALVIN, *et al.*,

Defendants.

Case No. 1:24-cv-01079-JLT-BAM

ORDER DENYING MOTION FOR ANSWER  
OR FOR ENTRY OF DEFAULT JUDGMENT

(ECF No. 23.)

ORDER DIRECTING DEFENDANTS TO RE-  
SERVE COURTESY COPY OF ANSWER ON  
PLAINTIFF WITHIN **FIVE (5) DAYS**

Plaintiff Jose Antonio Martinez (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against Defendants J. Galvin and D. Burns (“Defendants”) for violation of the First Amendment based on an as-applied challenge to the policy withholding the photographs.

Defendants filed executed waivers of service on June 12, 2025, (ECF No. 19), and answered the first amended complaint on July 14, 2025, (ECF No. 20). This case is currently set for a video settlement conference on October 6, 2025, at 9:30 a.m. before Magistrate Judge Stanley A. Boone. (ECF No. 21.)

Currently before the Court is Plaintiff’s “Motion to Move that the Court have the Defendants Answer the Civil Complaint in the Above Entitled Case, or that Plaintiff Gets a Default Judgment.” (ECF No. 23.) Although Defendants have not yet had an opportunity to file

1 a response, the Court finds a response unnecessary. The motion is deemed submitted. Local Rule  
2 230(l).

3 In his motion, Plaintiff seeks that “Defendants answer this civil complaint or face a default  
4 judgment.” (ECF No. 23 at 1.) Plaintiff states that “Defendants had until 7-14-2025 to answer  
5 said complaint.” (*Id.*) Plaintiff now moves that the Court have Defendants answer his civil  
6 complaint, and if Defendants “fail to answer or refuse to answer this complaint, that a default  
7 judgment be entered against them and Plaintiff be awarded \$50,000 & the 73 photographs.” (*Id.*)

8 Plaintiff’s motion is denied. As noted above, Defendants filed an answer to the first  
9 amended complaint on July 14, 2025. (ECF No. 20.) As Plaintiff was served by mail, he would  
10 not have received the answer on the same date that it was filed with the Court. Because  
11 Defendants’ answer was timely filed with the Court, even if not immediately received by  
12 Plaintiff, entry of default or default judgment is not appropriate.

13 However, based on Plaintiff’s Notice of Change of Address dated July 28, 2025, he may  
14 not have received a copy of Defendants’ answer. (ECF No. 22.) As a one-time courtesy to  
15 Plaintiff, the Court will direct Defendants to re-serve their answer on Plaintiff at his current  
16 address of record.

17 Accordingly, IT IS HEREBY ORDERED as follows:

- 18 1. Plaintiff’s motion to have the defendants answer the complaint or for default judgment  
19 (ECF No. 23) is DENIED; and
- 20 2. Within **five (5) days** from the date of service of this order, Defendants are DIRECTED  
21 to re-serve a copy of their answer, (ECF No. 20), on Plaintiff.

22  
23 IT IS SO ORDERED.

24 Dated: August 14, 2025

/s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE